



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231 www.uspto.gov

DATE MAILED: 10/16/2002

	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
APPLICATION NO.	FILING DATE		06275/004001	3709
08/736,267	10/24/1996	KJELL G. E. BACKSTROM	06273/004001	3707
75	90 10/16/2002			
JANIS K FRASER			EXAMINER	
RISH & RICHARDSON			LUKTON, DAVID	
225 FRANKLII	N STREET			
BOSTON, MA 021102804		ART UNIT	PAPER NUMBER	
			1653	51

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner			Application No.	Applicant(s)			
David Lukton 1653				BACKSTROM ET AL.			
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Esterations of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be limitely filled after 31x, 67 MONTHS from the mailing date has him (%) 00 days, a reply within the statutory minimum of thinty (30) days will be considered finely. If NO period for reply is specified above, the maximum statury operand will apply and will expire 31x (6) MONTHS from the mailing date of 11th communication. The provision of the communication of the communication, even if timely filled, may reduce any search of patient than displanment of sets of the thing of the communication, even if timely filled, may reduce any search of patient than displanment of the communication of the communication, even if timely filled, may reduce any search of the communication of the communication, even if timely filled, may reduce any search of the communication of the		Office Action Summary	Examiner	Art Unit			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 3 FOFK 1.18(a). In no event, however, may a reply be timely filled after \$1.6 (b) (MONT's from the mailing date of this (b) (MONT's from the mailing date of this (b) (MONT's from the mailing date of this (b)			David Lukton	l			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.18(a). In no event, however, may a reply be timely filled after SX (6) MONTHS from the mailing about provisions of 37 CFR 1.18(a). In no event, however, may a reply be timely filled after SX (6) MONTHS from the mailing mail and the status of the status o							
THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.38(a). In no event, however, may a reply be timely filed after SX (6) MONTES from the mailing date of this communication. In the period for reply specified above is less manufactured and the period of	Period for Reply						
Status 1) ⊠ Responsive to communication(s) filed on 19 July 2002. 2a) ☐ This action is FINAL. 2b) ⊠ This action is non-final. 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ☒ Claim(s) 1,3-10.12-16.21,22.26.27,29-32,50-87,89-97 and 101-118 is/are pending in the application. 4a) Of the above claim(s) 28,56,61-77.79 and 88 is/are withdrawn from consideration. 5) ☐ Claim(s) is/are allowed. 6) ☒ Claim(s) 1,4.21,22.26,27.29,30.32,50-55,57-60,78,80-87,89-97 and 102 is/are rejected. 7) ☒ Claim(s) 3,5-10,12-16,31,101 and 103-118 is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or election requirement. Application Papers 9) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner. 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) ☐ The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. § 119 and 120 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) ☐ All b) ☐ some * c) ☐ None of: 1. ☐ Certified copies of the priority documents have been received in Application No 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	 THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any 						
This action is FINAL. 2b) This action is non-final. 3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1,3-10,12-16,21,22,26,27,29-32,50-87,89-97 and 101-118 is/are pending in the application. 4a) Of the above claim(s) 28,56,61-77,79 and 88 is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) 1,4.21,22,26,27,29,30,32,50-55,57-60,78,80-87,89-97 and 102 is/are rejected. 7) Claim(s) 3,5-10,12-16,31,101 and 103-118 is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved by disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. § 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some c) None of: 1. Certified copies of the priority documents have been received in Application No. 2. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	Status						
Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1,3-10,12-16,21,22,26,27,29-32,50-87,89-97 and 101-118 is/are pending in the application. 4a) Of the above claim(s) 28,56,61-77,79 and 88 is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) 1,4,21,22,26,27,29,30,32,50-55,57-60,78,80-87,89-97 and 102 is/are rejected. 7) Claim(s) 3,5-10,12-16,31,101 and 103-118 is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailled Office action for a list of the certified copies not received.	1)⊠						
Closed in accordance with the practice under Ex parte Quayre, 1933 c.l. 1. Disposition of Claims 4) Claim(s) 1,3-10.12-16,21.22,26,27,29-32,50-87,89-97 and 101-118 is/are pending in the application. 4a) Of the above claim(s) 28,56,61-77,79 and 88 is/are withdrawn from consideration. 5) Claim(s)	2a) <u></u> ☐						
4) Claim(s) 1,3-10,12-16,21,22,26,27,29-32,50-87,89-97 and 101-118 is/are pending in the application. 4a) Of the above claim(s) 28,56,61-77,79 and 88 is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) 1,4.21,22,26,27,29,30,32,50-55,57-60,78,80-87,89-97 and 102 is/are rejected. 7) Claim(s) 3,5-10,12-16,31,101 and 103-118 is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. § 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	closed in accordance with the practice under Ex pane Quayle, 1935 C.D. 11, 433 C.C. 216.						
4a) Of the above claim(s) 28.56.61-77.79 and 88 is/are withdrawn from consideration. 5) ☐ Claim(s) is/are allowed. 6) ☒ Claim(s) 1.4.21.22.26.27.29.30.32.50-55.57-60.78.80-87.89-97 and 102 is/are rejected. 7) ☒ Claim(s) 3.5-10.12-16.31,101 and 103-118 is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or election requirement. Application Papers 9) ☐ The specification is objected to by the Examiner. 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) ☐ The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) ☐ All b) ☐ Some * c) ☐ None of: 1. ☐ Certified copies of the priority documents have been received. 2. ☐ Certified copies of the priority documents have been received in Application No 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	Dispositi	On or Claims	7	ending in the application.			
5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are allowed. 7) ☐ Claim(s) is/are	4) ∑ Claim(s) 1,3-10,12-10,21,22,20,27,29-32,50-67,69-97 and 107-170 is all periods at the approximation of the above claim(s) 28 56 61-77 70 and 88 is/are withdrawn from consideration.						
6) Claim(s) 1,4,21,22,62,72,9,30,32,50-55,57-60,78,80-87,89-97 and 102 is/are rejected. 7) Claim(s) 3,5-10,12-16,31,101 and 103-118 is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.							
7) Claim(s) 3.5-10.12-16.31.101 and 103-118 is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	5)[_	Claim(s) is/are allowed.					
8 Claim(s) are subject to restriction and/or election requirement. Application Papers 9 The specification is objected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11 The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12 The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13 Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.							
Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.							
9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	, , , , , , , , , , , , , , , , , , ,						
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	••						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	11)	The proposed drawing correction filed on	is: a)∏ approved b)∏ disap	proved by the Examiner.			
Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.	If approved, corrected drawings are required in reply to this Office action.						
Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.							
 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 							
 a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 	13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
 Certified copies of the priority documents have been received. Certified copies of the priority documents have been received in Application No Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 							
 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 		1. Certified copies of the priority docume	nts have been received.				
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.		2. Certified copies of the priority documents have been received in Application No					
See the audited detailed Office detailed of the state of	3. Copies of the certified copies of the priority documents have been received in this National Stage						
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).							
a) The translation of the foreign language provisional application has been received.							
15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.							
Attachment(s) 4) Interview Summary (PTO-413) Paper No(s)			1) Interview Sun	nmary (PTO-413) Paper No(s).			
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 49. 4) Interview Summary (PTO-413) Paper No(s). 5) Notice of Informal Patent Application (PTO-152) 6) Other:	2) No	tice of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Info	rmal Patent Application (PTO-152)			

Pursuant to the directives of paper No. 50 (filed 7/19/02), claim 2 has been cancelled, and claims 1, 21, 30, 56, 59, 71, 89, 94 amended. Claims 1, 3-10, 12-16, 21, 22, 26, 27, 29-32, 50-87, 89-97, 101-118 remain pending.

The following claims are now rejoined with the elected group: 21, 22, 26, 27, 29, 30, 32, 50-55, 57-60, 78, 80-87, 89-97. The following claims are not rejoined, and remain withdrawn: 28, 56, 61-77, 79 and 88.

- Claim 56 is not rejoined because it permits the presence of any phospholipid, and not just those that are recited in claim 1
- Claims 61-77 are not rejoined, because these are contained within Group II, as defined by the restriction requirement mailed 12/30/99.
- Claim 79 is not rejoined, because it is not subgeneric to claim 78.
- Claims 28 and 88 are not rejoined, because there is no antecedent basis for the "enhancer".

Claims 1, 3-10, 12-16, 21, 22, 26, 27, 29-32, 50-55, 57-60, 78, 80-87, 89-97, 101, 102, 103-118 are examined in this Office action.

*

• Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,518,998 or

5,518,998 C1. Although the conflicting claims are not identical, they are not patentably distinct from each other; there is overlap of the claimed subject matter.

- Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,747,445. Although the conflicting claims are not identical, they are not patentably distinct from each other; there is overlap of the claimed subject matter.
- Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,165,976. Although the conflicting claims are not identical, they are not patentably distinct from each other; there is overlap of the claimed subject matter.
- Claim 21 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,830,853. Although the conflicting claims are not identical, they are not patentably distinct from Claim 1 of '853 is drawn to a method of treating diabetes (or other insulin-deficient disease) by administering insulin by means of a dry powder Claim 21 of the instant application does not mention insulin or inhalation device. diabetes or a dry powder inhalation device; claim 21 is not even directed to treatment However, it is clear from a reading of the specification that insulin of a disease. is the most preferred peptide to administer; a person practicing the '853 invention would be systemically administering the insulin to the same extent as the practioner The difference is that the '853 invention requires of the instant application. therapeutic success as a consequence of the administration; the instant claims only require that administration be achieved.
- Claim 102 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,004,574. Although the conflicting claims are not identical, they are not patentably distinct from each other; there is overlap of the claimed subject matter.
- Claim 78 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,436,902. Although the conflicting claims are not identical, they are not patentably distinct from each other; there is overlap of the claimed subject matter.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. In re Vogel, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application . See 37 CFR 1.78(d)

*

Claims 4, 21, 22, 26, 27, 29, 30, 32, 50-55, 57-60, 78, 80-87, 89-97 are rejected under 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- In claim 4, the term "biologically active" renders the claim indefinite as to the manifestations of that activity.
- In claim 4, the term "analog" renders the claim indefinite as to structure and activity.
- In claim 21, "said patient" lacks antecedent basis.
- Claim 21 is indefinite as to the process steps and enpoint. For example, if the patient were to inhale just 1 milliliter of air, would that be sufficient? How does one distinguish the patient who has undertaken the steps necessary to achieve systemic administration, from the patient who has not? One option would be to recite that the patient inhales the composition for a time and under conditions effective for the polypeptide to be absorbed through the epithelial cells of the lower respiratory tract.

Another option would be to recite that the patient inhales the composition for a time and under conditions effective for the polypeptide to be conveyed to the bloodstream of the patient.

• In each of claims 27, 81 and 105, the term "biologically active" renders the claim

indefinite as to the manifestations of that activity.

• In each of claims 27, 81 and 105, the term "analog" renders the claim indefinite as to structure and activity.

*

Document 8007820 (Swedish patent) was stricken from the IDS because it was not recieved.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 703-308-3213. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached at (703) 308-2923. The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

DAVID LUNION
PATENT EXAMINER
GROUP ****